

09-CV-05169-ORD

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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT TACOMA**

11 **COSCO BULK CARRIER CO. LTD.,**

12 **Plaintiff,**

13 **v.**

14 **EAST SUCCESS SHIPPING LTD., *in personam*, and**
15 **M/V YUN TONG HAI, *in rem*.**

16 **Defendants.**

At Law or In Admiralty

No. **C09 5169** *RJB*

**ORDER APPOINTING SUBSTITUTE
CUSTODIAN**

17 Plaintiff, COSCO BULK CARRIER CO. LTD., by and through its attorney of record,
18 makes the following recitals:

19 1. On March 26, 2009 the Complaint herein was filed, praying that the defendant
20 vessel M/V YUN TONG HAI Official No. 8801022, her engines, machinery, and
21 appurtenances, be condemned and sold to pay plaintiff's claim; and for other proper relief.

22 2. In the immediate future, the Clerk of this Court is expected to issue a Warrant
23 for Arrest, commanding the United States marshal for this District to arrest and take into

1 custody the defendant vessel and to detain the same in his custody until further order of this
2 Court.

3 3. After the Clerk of this Court issues the Warrant for Arrest, the United States
4 Marshal will seize the defendant vessel forthwith.

5 4. The fees, expenses, and moorage/anchorage charged by the substitute
6 custodian will be less than the cost of leaving the vessel in the custody of the United States
7 Marshal.

8 5. The defendant vessel is currently in route to a pier at Port of Tacoma,
9 Washington. The proposed Substitute Custodian has made arrangements to keep the vessel
10 at anchorage in Tacoma, Washington during the period of arrest. After arrest, it may be
11 necessary to move the vessel to another suitable place of anchorage.

12 6. Plaintiff has requested that John Baker and/or Buck Fowler, Jr., on behalf of
13 Marine Lenders Services LLC, be named as substitute custodian and allowed to assume the
14 responsibility of safekeeping defendant vessel.

15 7. John Baker and/or Buck Fowler, Jr., the proposed substitute custodian, has no
16 interest in the outcome of the action in which the property will be under arrest.

17 8. The vessel, M/V YUN TONG HAI, will not be moved and no person except
18 the Substitute Custodian will be allowed to enter the vessel except as necessary to adequately
19 take-keep and protect the property, and except as may be expressly ordered by the Court.

20 9. The plaintiff, through the proposed substitute custodian has obtained the
21 insurance coverage required by the Supplementary Admiralty Rules. Indeed, John Baker
22 and Buck Fowler, Jr., avers that he is the beneficiary of adequate substitute custodian
23

1 insurance to respond to claims for loss of or damage to the defendant vessel and for damage
2 sustained by third parties during the custody of the vessel, that insurance by Great American
3 Insurance Co., under Policy No. OMH5405276 with policy limits of \$2,000,000 for damage
4 sustained by third parties due to negligence committed during said custody. A copy of the
5 Certificate of Liability Insurance is attached to his Affidavit.

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7 10. In consideration for the appointment of John Baker and/or Buck Fowler, Jr. as
8 substitute custodian, plaintiff agrees to release the United States and the United States
9 Marshal from any and all liability and responsibility arising out of care and custody of the
10 defendant vessel, her engines, machinery, and appurtenances, etc., from the time the United
11 States Marshal transfers possession of the said vessel over to said substitute custodian until
12 the property is released or sold. Plaintiff further agrees to hold harmless and indemnify the
13 United States and the United States Marshal from any and all claims whatsoever arising out
14 of the substitute custodian's possession and safekeeping, including but not limited to any
15 liability and responsibility arising from crewmembers living aboard the vessel and with
16 regard to repairs to and testing of the vessel, its engines and equipment during the pendency
17 of the arrest. Furthermore, plaintiff agrees to pay the fees of the substitute custodian and any
18 moorage charges.

19 11. John Baker and/or Buck Fowler, Jr., accepts appointment as substitute
20 custodian and possession of vessel M/V YUN TONG HAI and will safely keep the property
21 for the duration of the appointment as substitute custodian.

22 **THEREFORE, IT IS ORDERED** that the United States Marshal for the Western
23 District of Washington is authorized, upon seizure of said defendant vessel, pursuant to

1 Warrant for Arrest, to surrender the possession thereof to John Baker or Buck Fowler, Jr. as
2 substitute custodian named herein, and that upon such surrender the United States Marshal
3 shall be discharged from the duties and responsibilities for the safekeeping of said vessel and
4 held harmless from any and all claims arising out of said custodial services.

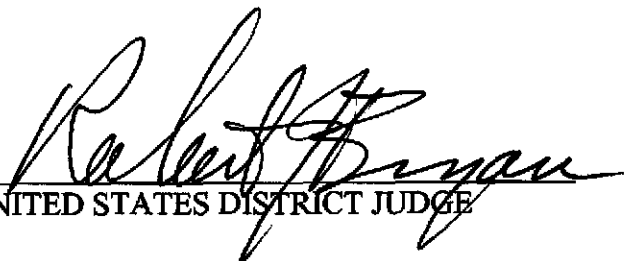
5 **IT IS FURTHER ORDERED** that John Baker and/or Buck Fowler, Jr. is appointed
6 custodian of the defendant vessel and shall retain the vessel in its custody for possession and
7 safekeeping, subject to the terms of the Warrant for Arrest issued in this matter, until further
8 order of this Court.

9 **IT IS FURTHER ORDERED** that the substitute custodian may permit boarding and
10 inspection of the defendant vessel by marine surveyors, representatives of plaintiff and
11 prospective purchasers in order to determine the vessel's condition and value. All costs of
12 such boardings and inspections shall be paid by plaintiff and may, upon further Order of this
13 Court, be deemed administrative costs herein.

14 **IT IS FURTHER ORDERED** that plaintiff's attorney serve a copy of this Order on
15 the owner of defendant vessel.

16 **IT IS FURTHER ORDERED** that the Clerk of this Court deliver three certified
17 copies of this Order to the United States Marshal forthwith.

18 DATED this 27th day of March, 2009.

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21 
22 UNITED STATES DISTRICT JUDGE
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1 Presented By:

2 LEGROS BUCHANAN & PAUL

3
4 By: *Dustin Hamilton*, WSBA 40451, on behalf of
5 Eric R. McVittie, WSBA 20538
6 Attorneys for Plaintiff

7 Approved for Entry:

8 *William J. Hawe*

9 UNITED STATES MARSHAL

10 Western District of Washington

11 For: *Michelle Stetson*